

Julie A. Mersch, Esq.  
Nevada Bar No. 004695  
LAW OFFICE OF JULIE A. MERSCH  
428 S. 4<sup>th</sup> Street  
Las Vegas, NV 89101  
(702) 387-5868  
Fax (702) 387-0109  
jam@merschlawn.com  
*Attorney for Plaintiff Mark Polston*

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

MARK POLSTON,	)	CASE NO.: 2:24-cv-01408-JCM-BNW
	)	
Plaintiff,	)	
	)	
vs.	)	<b><u>DISCOVERY PLAN AND</u></b>
	)	<b><u>SCHEDULING ORDER</u></b>
NORFOLK SOUTHERN CORPORATION	)	
LONG-TERM DISABILITY BOARD OF	)	
MANAGERS as Plan Administrator of the	)	(Special Scheduling Review
Norfolk Southern Corporation – RBO Long-	)	Requested)
Term Disability Plan; HARTFORD LIFE	)	
AND ACCIDENT INSURANCE	)	
COMPANY as Claims Administrator for the	)	
Norfolk Southern Corporation –RBO Long-	)	
Term Disability Plan,	)	
	)	
Defendants.	)	

Plaintiff MARK POLSTON and Defendants (named in the Complaint as) NORFOLK SOUTHERN CORPORATION LONG-TERM DISABILITY BOARD OF MANAGERS (“NSC”) and HARTFORD LIFE AND ACCIDENT INSURANCE COMPANY (“HARTFORD”)<sup>1</sup> jointly request special scheduling review and submit the following discovery plan and order for this case.

**I. Rule 26(f) Conference.**

In accordance with Fed. R. Civ. P. 26(f), a telephonic conference was held on

<sup>1</sup> As noted below, Defendants have answered the Complaint on behalf of different entities as they allege that the named Defendants are no longer legal entities.

1 November 13, 2024 between Julie A. Mersch, counsel for the Plaintiff, and Kristina N.  
2 Holmstrom, counsel for NSC and HARTFORD. The parties agree that the standard  
3 discovery plan is not best suited for this lawsuit, for the reasons set forth below. The parties  
4 further certify, pursuant to LR 26-1(b)(7-8), that they have met and conferred regarding the  
5 possibility of using alternate dispute-resolution processes. The provisions of LR 26-1(b)(9)  
6 do not apply as no jury trial is demanded or allowed in this matter.

7 **II. Nature of Case and Purpose of Special Review.**

8 The Plaintiff's complaint alleges a claim under the Employee Retirement Income  
9 Security Act of 1974, 29 U.S.C. § 1001, et seq. ("ERISA"), seeking, *inter alia*, reinstatement  
10 of long-term disability benefits terminated by HARTFORD and payment of past benefits.  
11 This action is brought pursuant to § 502(a)(1)(B) of ERISA (29 U.S.C. §§ 1132 (a)(1)(B)) for  
12 wrongful denial of benefits. Plaintiff further alleges breach of fiduciary duty under ERISA  
13 §502(a)(3), 29 U.S.C. §1132 (a)(3) and wrongful failure to provide plan documents to  
14 Plaintiff as requested under ERISA §502(c)(1), 29 USC §1132(c)(1) against Defendant NSC  
15 Board of Managers.

16 The parties currently dispute the identities of the proper defendants. Defendants have  
17 answered separately. Both Defendants have averred in their Answers that "DEFENDANT  
18 VICE PRESIDENT – HUMAN RESOURCES OF NORFOLK SOUTHERN  
19 CORPORATION, AS PLAN ADMINISTRATOR OF THE NORFOLK SOUTHERN  
20 CORPORATION ("NSC") CHOICEPLUS BENEFITS PLAN" and "HARTFORD LIFE  
21 AND ACCIDENT INSURANCE COMPANY, AS CLAIM ADMINISTRATOR FOR  
22 PLAINTIFF'S LONG-TERM DISABILITY CLAIM UNDER THE NORFOLK  
23 SOUTHERN CORPORATION CHOICEPLUS PLAN" are the properly named defendants  
24 and have identified plan names and documents in their respective Answers, accordingly.  
25 Plaintiff Mark Polston awaits Defendants' Fed.R.Civ.P. 26 disclosures, including supporting  
26 declarations as appropriate, in support of Defendants' averments and denials in their

1 respective Answers.

2 No discovery plan and scheduling order is generally required for review of an  
3 administrative record. LR 16-1(c)(1). An action for an administrative review usually requires  
4 that the parties file a briefing schedule. LR 16-1(c). Accordingly, the parties jointly request  
5 that this Court review and adopt the proposed non-standard discovery and case schedule set  
6 forth below:

7 **III. Proposed Plan**

8 The parties have conferred and agree as follows:

9 **A. Production of the Administrative Record:** Defendants will disclose a  
10 copy of the ERISA administrative record by **Friday, January 10, 2025.**

11 **B. Meet and Confer Period:** Due to the time that counsel have already met and  
12 conferred over 1) the applicable plan documents and 2) names of the proper defendants --  
13 with no final resolution achieved to date -- Plaintiff contends that he will need to file at least  
14 one motion to supplement the administrative record and is entitled to conduct discovery on  
15 these two items. Plaintiff anticipates that motion practice will be required, depending on what  
16 declarations, if any, are included in the Administrative Record submitted by Defendants.  
17 Upon receipt of the Administrative Record on January 10, 2025, Plaintiff will review same  
18 and be in a better position to further meet and confer and isolate the remaining disputes.  
19 Defendants do not concede that discovery is appropriate or permissible under the facts of this  
20 case.

21 Accordingly, Plaintiff and Defendants will meet and confer by **Friday, January 31,**  
22 **2025** as to 1) the type of discovery and scope of discovery that Plaintiff contends is  
23 permissible and should be conducted, with reasonable specificity (including proposed written  
24 discovery where possible); and 2) whether the parties agree regarding the contents of the  
25 Administrative Record, including whether materials should be added and/or removed  
26 therefrom. Any discovery that the parties agree is permissible ERISA discovery shall be

1 served by **Friday, February 7, 2025** and answered by **March 10, 2025**. Any materials that  
 2 the parties agree should be added to or removed from the Administrative Record shall be  
 3 done so by **Monday, March 10, 2025**. Counsel for the parties will continue to meet and  
 4 confer (as necessary) upon receipt of any discovery responses or additions/removals from the  
 5 Administrative Record.

6 **C. Briefing re: ERISA Discovery Disputes:** To the extent that, after the meet  
 7 and confer and discovery period, the parties still disagree as to 1) the permissible scope of  
 8 discovery and type of discovery and/or 2) the contents of the Administrative Record, on or  
 9 before **Monday, April 14, 2025**, the parties will simultaneously brief the Court and request a  
 10 ruling on any remaining disputes.

11 **D. Filing of ERISA Administrative Record and Briefing of the Merits of the**  
 12 **Case:** If no discovery briefs are filed under Paragraph III.C., above, on or before **Monday,**  
 13 **April 28, 2025**, Defendants will file the Administrative Record with this Court, the contents  
 14 of which will be agreed upon by the parties. The parties jointly request to file the  
 15 administrative record under seal. It is over 1,000 pages long and contains personal identifiers  
 16 on most pages. Redacting the record would be prohibitively time-consuming and expensive.  
 17 Additionally, the administrative record contains Plaintiff's sensitive medical and behavioral  
 18 health records. Plaintiff will confer with Defendant prior to the filing of the Administrative  
 19 Record to the extent there are materials contained therein which he believes are not sensitive  
 20 or do not contain personal identifiers. As of the filing of this document, Plaintiff does not  
 21 agree to a blanket seal of the entire Administrative Record. If a joint Administrative Record  
 22 is timely filed and simultaneous motions are not filed under Paragraph III.C., above, the  
 23 parties propose that Plaintiff's Rule 56 and/or Rule 52 motion be filed no later than **Monday,**  
 24 **May 26, 2025**. Defendant's response will be due by **Monday, June 30, 2025**, and Plaintiff's  
 25 reply memoranda will be due by **Monday, July 14, 2025**.

26 If motion(s) are filed under Paragraph III.C., above, the deadlines set forth in

1 this Paragraph III.D. will be suspended. The parties will propose new deadlines after any  
2 discovery motion has been ruled upon, to take into account any additional discovery time  
3 permitted.

4 **IV. Settlement.**

5 The parties are currently engaging in settlement discussions.

6 DATED: December 20, 2024 LAW OFFICE OF JULIE A. MERSCH

7  
8 By: /s/ Julie A. Mersch  
9 JULIE A. MERSCH  
10 jam@merschlaw.com  
11 Nevada Bar No.: 004695  
428 S. 4<sup>th</sup> Street  
Las Vegas, NV 89101  
*Attorney for Plaintiff Mark Polston*

12 DATED: December 20, 2024 OGLETREE, DEAKINS, NASH, SMOAK &  
13 STEWART, P.C.

14 By: /s/ Kristina N. Holmstrom  
15 KRISTINA N. HOLMSTROM  
16 kristina.holmstrom@ogletree.com  
10801 W. Charleston Blvd., Ste. 500  
17 Las Vegas, NV 89135  
*Attorneys for Defendants HARTFORD  
and NSC*

18  
19 **IT IS SO ORDERED:**

20 Dated this 23 day of December, 2024.

21  
22   
23 UNITED STATES MAGISTRATE JUDGE  
24  
25  
26